

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EDMUND BRYAN,

Plaintiff,

-against- No. 07 Civ. 7300 (SHS)

ECF Case
MEMORIAL SLOAN-KETTERING CANCER
CENTER,

Defendant.

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April 24, 2008
10:20 A.M.

Deposition of Defendant, by
SHEILA DONOGHUE, taken by Plaintiff, pursuant
to Notice, at the offices of The Scott Firm,
55 Washington Street, Suite 705, Brooklyn, New
York 11201, before Charisse Romeo, a Shorthand
Reporter and Notary Public within and for the
State of New York.

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2 A P P E A R A N C E S:

3

THE SCOTT FIRM

4 Attorneys for Plaintiff

55 Washington Street, Suite 705

5 Brooklyn, New York 11201

6 BY: A. BARAKA SCOTT, ESQ.

7

8 McDERMOTT, WILL & EMERY, LLP

Attorneys for Defendant

9 340 Madison Avenue

New York, New York 10173

10

BY: KATHERINE D. KALE, ESQ.

11

12 A L S O P R E S E N T:

13 PAMELA DUDLEY

Memorial Sloan-Kettering Center

14 Human Resources Representative

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2 IT IS HEREBY STIPULATED AND AGREED by

3 and between the attorneys for the respective

4 parties herein that the sealing, filing and

5 certification of the within deposition be waived;

6 that such deposition may be signed and sworn to

7 before any officer authorized to administer an

8 oath, with the same force and effect as if signed

9 and sworn to before a judge of this court.

10 IT IS FURTHER STIPULATED AND AGREED

11 that all objections, except as to the form, are

12 reserved to the time of the trial.

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1 S. Donoghue

2 S H E I L A D O N O G H U E,

3 having been first duly sworn by the

4 Notary Public (Charisse Romeo), was

5 examined and testified as follows:

6 EXAMINATION BY MR. SCOTT:

7 Q. Would you state your name for the
8 record?

9 A. Sheila Donoghue.

10 Q. What is your address?

11 A. 633 Third Avenue, 5th Floor, New
12 York, New York 10017.

13 Q. Good morning, Ms. Donoghue. How
14 are you?

15 A. Fine, thank you.

16 Q. My name is Armani Scott. I am
17 the attorney for Edmund Bryan in the case
18 captioned Edmund Bryan versus Memorial
19 Sloan-Kettering Cancer Center.

20 You are appearing here pursuant

21 to a notice of deposition; is that correct?

22 A. Correct.

23 Q. I'm going to ask you some

24 questions related to Mr. Bryan's claim against

25 the Memorial Sloan-Kettering Cancer Center and

1 S. Donoghue

2 I just want to lay down some ground rules.

3 As you can see, there is a court
4 reporter here taking down everything that is
5 said so that we can properly record it. So I
6 would like you to wait for me to complete my
7 question and then you can answer.

8 In the event that I phrase a
9 question in an inartful fashion, confusing in
10 any way, please feel free to say I don't
11 understand what you are saying and I'll
12 rephrase it so we can move along. If you
13 don't know an answer to a question, feel free
14 to say I don't know or I don't remember. I
15 don't want you to guess on anything, okay?

16 A. All right.

17 Q. Ms. Donoghue, by whom are you
18 employed?

19 A. Memorial Sloan-Kettering Cancer
20 Center.

21 Q. For how long have you been so

22 employed?

23 A. Almost 20 years.

24 Q. And what is your title at the

25 hospital?

1 S. Donoghue

2 A. I am an HR consultant/generalist.

3 Q. And for how long have you been a
4 HR consultant/generalist?

5 A. Almost a year.

6 Q. And prior to that, what was your
7 job title?

8 A. I was a senior employee relations
9 specialist.

10 Q. Can you briefly describe what
11 your job responsibilities are now as an HR
12 consultant and generalist?

13 A. Basically, I am forging a
14 relationship as a strategic partner with our
15 business groups. A work-in-process. I work
16 with assigned departments working with
17 workforce planning, employment strategies,
18 consulting on day-to-day employee relations
19 matters.

20 Q. In your new title, is there a

21 name to the department under which you report?

22 A. Human resources.

23 Q. Human resources, okay.

24 Your previous job title was a

25 senior employment relations --

1 S. Donoghue

2 A. Employee.

3 Q. Employee relations specialist,

4 thank you.

5 A. Yes.

6 Q. What department did that title

7 come under?

8 A. Under employee relations.

9 Q. So --

10 A. Which is part of human resources,

11 which was part of human resources.

12 Q. Was there any particular reason

13 why you changed from senior employee relations

14 specialist to your new job title?

15 A. The department, human resources

16 department underwent a reorganization

17 approximately about a year ago.

18 Q. Did your change in title result

19 in an increase in pay?

20 A. Not for me.

21 Q. Was there an increase in staff
22 that you were responsible for in any way?

23 A. No, not really.

24 Q. If you were to describe the
25 change in your overall job responsibilities,

1 S. Donoghue

2 how would you describe that from your last
3 title to the current one you have now?

4 A. The previous job did not involve
5 the expectation that we would become strategic
6 business partners with the various business
7 groups that I am assigned to at the hospital.
8 It was more or less dealing with employee
9 relations issues, maybe clarifying policy
10 issues. Working day-to-day matters,
11 day-to-day business matters, as opposed now
12 maybe engaging in more long-range planning.

13 Q. Is it also safe to say that your
14 responsibilities now involve more contact with
15 parties outside of the hospital as opposed to
16 intraoffice issues between management and
17 staff?

18 A. No, they may be a diminishment
19 because of the role that I've assumed, but I
20 am still working with all the groups within

21 the hospital, a different group than I had
22 worked with when I was employee relations. I
23 have a different assignment.

24 Q. Prior to your title as a senior
25 employee relations specialist, what was your

1 S. Donoghue

2 job title at the hospital?

3 A. I was manager of employee

4 relations.

5 Q. And how long were you the manager

6 of employee relations?

7 A. Maybe four years. I'm not sure.

8 Q. Okay. This also was a part of

9 human resources?

10 A. Correct.

11 Q. Prior to your manager of employee

12 relations job title, what were you doing at

13 the hospital; what was your title at the

14 hospital?

15 A. I was a senior employee relations

16 specialist.

17 Q. The title that --

18 A. That I had my most recent title,

19 correct.

20 Q. How long were you in that job

21 title, for what period of time?

22 A. I don't recall.

23 Q. Any other job titles with the

24 hospital other than the current one you hold

25 now, senior employee relations specialist and

1 S. Donoghue

2 manager of employee relations?

3 A. I may have started out as an
4 employee relations specialist, I think I
5 did -- when I was first hired, I was an
6 employee relations specialist.

7 Q. It is safe to say for your entire
8 tenure at the hospital, you were assigned to
9 the human resources department of Memorial
10 Sloan-Kettering; is that correct?

11 A. That's correct. That's correct.

12 Q. Just briefly your educational
13 background, if you could just state that?

14 A. I have a master's degree and I
15 have training from Cornell, the School of
16 Labor Relations.

17 Q. In your present job title, do you
18 have any responsibilities with regards to the
19 hiring or termination of employment for
20 Memorial Sloan-Kettering?

21 A. I am involved in recruiting.

22 Q. And in what capacity?

23 A. Actually I've just begun

24 interviewing candidates for various positions.

25 Q. If you can, be more specific

1 S. Donoghue

2 regarding the positions that you are
3 recruiting.

4 A. We have an area called disease
5 management so I've interviewed for those jobs.
6 Recently I was involved in interviewing for
7 our administrative assistant in the
8 department, in which I am now currently
9 working. I held that interview process.

10 Q. Any other recruiting
11 responsibilities?

12 A. No, I attend job fairs. I've
13 just begun the recruiting aspect of my job.

14 Q. With regard to termination of
15 employment in your current job title, do you
16 have any authority in that regard?

17 A. What I do is I may advise, but I
18 don't have the ultimate decision, that would
19 be the department manager that would make the
20 ultimate decision. But I would have a

21 discussion, I would be involved in discussing
22 the pros and cons and I would make a
23 recommendation, but it may not necessarily be
24 carried through.

25 Q. Under what circumstances, in your

1 S. Donoghue

2 current job title, would you be in a position
3 to make a recommendation either for or against
4 the termination of employment of an employee
5 at Memorial Sloan-Kettering?

6 A. Well, if somebody has had a long
7 history of performance problems, a manager may
8 call and say, you know, so and so has been in
9 corrective action, they are on final warning
10 and we've had another incident and we think
11 maybe we need to consider employment
12 termination. So I would be engaged then in a
13 process with them to review the record, see
14 what the latest incident is, is there a
15 possibility that maybe we should give the
16 person another opportunity. So it would be
17 like, you know, just kind of problem-solving.

18 Q. So a manager would in that
19 circumstance initiate communication with you
20 and your office at human resources?

21 A. Yes, they would possibly call me

22 or come to the office, but it is always

23 initiated by the manager.

24 Q. You used the term "final

25 warning"?

1 S. Donoghue

2 A. Correct.

3 Q. Could you explain in the context
4 of your employment and your responsibilities
5 at Memorial Sloan-Kettering what does a final
6 warning mean, what does it constitute?

7 A. We have what we refer to as a
8 corrective action process. First step is
9 counseling, then there is a second step that's
10 called a verbal warning, and then there are
11 two written warning stages. There is the
12 first written warning and then there is a
13 final written warning.

14 Q. And at the point in time that an
15 employee has received a final written warning,
16 is that the only time when they would
17 potentially face termination of employment?

18 A. Not necessarily. It would depend
19 on the incident. It could be somebody who has
20 never had any kind of corrective action, but

21 maybe it was a very serious misconduct issue
22 so possibly they could be terminated, their
23 employment could be terminated without going
24 through progressive discipline.

25 Q. And as far as making that

1 S. Donoghue

2 determination whether or not a particular
3 conduct, or type of conduct, warrants
4 progressive discipline or more acute action,
5 consideration of termination, who makes the
6 determination on how to handle a particular
7 infraction, misconduct.

8 A. Again I would be working with the
9 department manager, possibly my manager
10 because we consider this to be very serious,
11 it isn't something that's done like
12 automatically.

13 Q. And the name of your manager at
14 this point in time?

15 A. Esther Altman, A-L-T-M-A-N.

16 Q. Are you familiar with the
17 Memorial Sloan-Kettering Cancer Center
18 employee handbook?

19 A. Yes, I am.

20 Q. How are you familiar with that

21 handbook; how did you come to be familiar with

22 it?

23 A. As an employee, it was given to

24 me and then in my job very frequently I have

25 to guide employees, if they have some

1 S. Donoghue

2 questions pertaining -- you know, whatever

3 question they may have.

4 Q. At any time during your tenure as
5 an employee at Memorial Sloan-Kettering, have
6 you had occasion yourself to make any
7 additions, amendments, changes, comments to
8 the actual employee handbook?

9 A. When the current one was being
10 revised, I was on the committee regarding the
11 revision.

12 Q. And what year was that?

13 A. I don't recall. It might have
14 been four, five years ago. I truly don't
15 know.

16 Q. That's fine. Do you recall any
17 particular comments or suggestions that you
18 made that actually made it into the revision?

19 A. No, I don't.

20 Q. Are you aware of whether or not

21 the Memorial Sloan-Kettering Cancer Center
22 employee handbook makes any sort of comments
23 or mandates with regards to discrimination in
24 the workplace?

25 A. I believe so.

1 S. Donoghue

2 Q. And if you could just state, what
3 is your understanding of the handbook's
4 position on discrimination in the workplace?

5 A. It is not tolerated.

6 Q. And is it your understanding that
7 the employee handbook is the official policy
8 position of Memorial Sloan-Kettering Cancer
9 Center?

10 A. We have a policy and procedure
11 manual and the handbook reflects -- I would
12 say it is a skeletal version of what is in
13 this very large procedures and policies
14 manager, but it parallels the essence of the
15 policy and procedure manual. It is just not
16 as detailed as what the policies would be.

17 Q. Does the employee handbook
18 contain guidelines for the reporting of
19 complaints with regards to discrimination in
20 the workplace?

21 A. I don't recall if it is in there
22 or the policy, but I know somewhere it does
23 exist, it directs employees as to what to do.

24 Q. If you can state, whether or not
25 it occurs in the handbook or on the policies

1 S. Donoghue

2 and procedures manual, what is the directive
3 from Memorial with regards to the reporting of
4 actions with respect to discrimination?

5 A. The general guidelines is for an
6 employee to first discuss the situation with
7 their direct supervisor or manager and if they
8 are not comfortable to do that, then to
9 escalate it, go to somebody else. If that
10 doesn't make them feel comfortable or they
11 choose not to do that, then to come directly
12 what is now called employee affairs, that was
13 employee relations, or to speak to their
14 hospital.

15 In my case, I am a hospital
16 consultant. I work on the hospital side to
17 speak to the hospital consultant who is
18 responsible for their business unit.

19 If a supervisor is made aware of
20 an issue such as discrimination, possible

21 discrimination charge, they are to alert

22 either the hospital consultant or employee

23 relations -- employee affairs, excuse me.

24 Q. When employee affairs is notified

25 of a complaint of discrimination, what action

1 S. Donoghue

2 is taken next?

3 A. Well, our structure has changed.

4 When the department was employee relations,

5 then it would be -- if the complaint came to

6 my attention, then I would begin looking into

7 the complaint immediately. Under the current

8 structure, if it went to an employee affairs,

9 they would begin looking into that and they

10 would then work with the consultant that was

11 involved, or responsible for that particular

12 business unit.

13 Q. When you say the structure has

14 changed, when, around what time did this

15 structure as far as action after reporting

16 change?

17 A. The structure of the department

18 changed in July, but I would say maybe as of

19 January -- and I would have to refer this to

20 Pam Dudley, she may have a better recollection

21 of this than I am because she is in that
22 department at the moment. I would say since
23 that time, I think we are still working out
24 who is responsible for what. But under all
25 situations, somebody would assume

1 S. Donoghue

2 responsibilities if a complaint came forward.

3 It would never not get addressed by anybody.

4 Q. And when you say "July," you are

5 referring to July, 2007?

6 A. 2007.

7 Q. Okay, very good.

8 A. Yes.

9 Q. This new liaison you are

10 referring to between employee affairs and the

11 hospital consultant --

12 A. Correct.

13 Q. -- can you just explain a little

14 more detail how that relationship works now?

15 A. The way it works now, the belief

16 was with the restructuring, there should be a

17 neutral place for employees to go to, if they

18 chose not to go to their hospital consultant,

19 but the role of employee affairs was very

20 important. So that has remained as an intact

21 group. But there is the expectation that we
22 would work together on any issues that come up
23 from, you know, any of the business units.

24 Q. And so I'm clear, are you
25 currently a hospital consultant?

1 S. Donoghue

2 A. Yes, I am on the hospital team.

3 Q. If you could just give me a quick

4 schematic as far as, if you could, and

5 again -- and I mean it so I'm not trying to --

6 A. No, I am not taking it that way.

7 Q. All right.

8 A. Basically there is a team of

9 three, three generalist teams because the

10 hospital -- I should start out, the hospital

11 is divided into three corporations although,

12 there is an SKI corporation and then there is

13 a Memorial Corporation and then there is what

14 we refer to as the MSKCC unit, that is the

15 business unit of the hospital.

16 Q. Okay.

17 A. So there are generalist teams for

18 each of these three entities?

19 Q. Okay.

20 A. The team I'm on services the

21 Memorial Hospital group.

22 Q. Is it safe to say now that

23 employee affairs is an over-arching entity

24 that has certain responsibility to mandate

25 regarding employee relationships with the

1 S. Donoghue

2 hospital and then there are these subgroups

3 with the generalist teams with specific

4 responsibilities to these various

5 corporations, SKI, Memorial and MSKCC?

6 A. I would say my understanding is

7 employee affairs is responsible for all -- any

8 issues pertaining to any employee in either

9 one of those groups and corporations. And

10 then if a particular issue arises out of one

11 of those groups, then they would work with --

12 like my manager Esther Altman is considered

13 the senior consultant on my team, so she would

14 possibly be the one that would first be spoken

15 to. And then there would be an assignment,

16 depending which business group the complaint

17 came out of, and then it would go to the

18 generalist to work with employee affairs.

19 Q. During your most recent tenure as

20 a senior employee relations specialist?

21 A. We vacillate between specialist

22 and generalist. I mean consultant and

23 generalist, sorry.

24 Q. Senior employee relations?

25 A. You mean my current role, the one

1 S. Donoghue

2 I am in now or the previous one?

3 Q. No, the previous role.

4 A. Okay.

5 Q. Did you have any responsibilities

6 with regards to the hiring of employees for

7 Memorial?

8 A. No, I did not.

9 Q. Did you have any responsibilities

10 with regard to termination of employees in

11 your most previous incarnation as a senior

12 employee relations generalist?

13 A. I was in an advisement capacity.

14 I was not authorized to make a determination

15 on my own.

16 Q. When you say that, is that

17 similar to the earlier example you gave when a

18 manager may bring a situation to you in regard

19 to an employee that is having some issues and

20 you would give advice on what the appropriate

21 steps would be?

22 A. Correct.

23 Q. Or have a discussion as to what

24 should happen next?

25 A. Exactly, it is the same.

1 S. Donoghue

2 Q. To your understanding, because
3 you said ultimately the final decision would
4 not rest with you, who has the final say so on
5 whether or not an employee is terminated?

6 A. It would be the hiring manager in
7 conjunction with their manager. It would be
8 on the department level, I'll simplify it. It
9 would be on the department level.

10 Q. Are you familiar with a Memorial
11 employee named Edmund Bryan?

12 A. Yes, I am.

13 Q. How did you come to know Mr.
14 Bryan?

15 A. I first met Mr. Bryan a number of
16 years ago when I worked in employee relations.

17 Q. If you recall, what were the
18 circumstances, the specific circumstances
19 under which you met?

20 A. My recollection is that he had

21 some complaints about his workplace
22 specifically, I believe it was his supervisor
23 at the time. I recall looking into an issue
24 regarding his pay advisory being opened before
25 he received the pay advisory directly. Some

1 S. Donoghue

2 environmental issues, I believe, regarding
3 somebody was playing a radio too loudly, he
4 found it disturbing.

5 Q. Okay.

6 A. At another point he was seeking
7 to move to another position within the
8 department. I looked into issues regarding
9 what, I guess, he would consider to be
10 negative interactions with his co-workers.
11 This is over a period of time. This was not
12 my initial encounter with him.

13 Q. All right. You referred in that
14 last statement to negative interactions --

15 A. Yes.

16 Q. -- with co-workers.

17 A. Correct.

18 Q. Do you recall any of the details
19 of any of those particular interactions?

20 A. My recollection is they were

21 always interpersonal in nature. Either people
22 complaining that he wasn't communicating
23 with -- he was not communicating with the rest
24 of the team. He felt that maybe communication
25 that they had with him, he felt was negative.

1 S. Donoghue

2 Q. And you said on some occasions
3 you looked into these complaints, how would
4 you look into; how did you look into a
5 complaint for Mr. Bryan regarding negative
6 interactions between himself and his
7 co-workers?

8 A. I recall meeting with the manager
9 of the department, his co-workers and Edmund
10 himself.

11 Q. Is this a particular specific
12 recollection that you have on one particular
13 occasion?

14 A. That's my recollection, I think
15 on at least a couple of occasions.

16 Q. Do you recall the names of the
17 managers with whom you met on any of the
18 occasions?

19 A. John Meggs.

20 Q. On the occasion, on occasion when

21 you met with Mr. Meggs, do you recall what the

22 nature of the complaint was that gave rise to

23 your having to meet with Mr. Meggs?

24 A. It may have been loud music being

25 played in the workplace. People using

1 S. Donoghue

2 inappropriate language.

3 Q. And could you be specific with
4 regards to what was the nature of their
5 language, the language complaint when he
6 says --

7 A. I know this is stereotype, you
8 know, construction type. You are in an
9 environment where a lot of people are working
10 on a construction site and venting, you know,
11 cursing. This is one of things that people
12 may hear. I know it is a stereotype, but it
13 is a common occurrence.

14 Q. I don't want to put words in your
15 mouth. Are you referring strictly to blue
16 language, foul language?

17 A. Probably at times, yes.

18 Q. Any other types of offensive
19 language that he complained to you about?

20 A. Most recently I recall maybe my

21 last situation with Edmund, there was an
22 incident regarding an employee from another
23 business unit that was in the department and
24 my understanding is that somebody in Edmund's
25 department was trying to cultivate a Jamaican

1 S. Donoghue

2 accent, and this individual was teaching him
3 how to sound as though he, himself, was from
4 Jamaica.

5 Q. Okay.

6 A. And Edmund took offense to that.

7 Q. Did Mr. Bryan ever complain to
8 you -- let me take a step back.

9 A. Okay.

10 Q. When Mr. Bryan would make these
11 complaints, how would he make them?

12 MS. KALE: Objection.

13 You can answer if you can.

14 A. The last time I remember he came
15 to see me, I actually met with him a couple of
16 times. I don't recall if he previously -- if
17 he may have called and then asked for an
18 appointment and then we set something up for
19 me to meet with him. I believe he also may
20 have given me written communication in the

21 form of a letter.

22 Q. So on occasions he would make
23 complaints verbally, orally to you?

24 A. Correct.

25 Q. And then on other occasions he

1 S. Donoghue

2 may put something in writing?

3 A. I believe.

4 Q. And give it to you?

5 A. I believe I recall seeing

6 something in writing.

7 Q. Is there any sort of company-wide
8 requirement with regards to making a complaint
9 with your department?

10 A. Would you say a little more about
11 that? I guess explain what you mean.

12 Q. Is there a form that may have
13 been filled out by an employee when they are
14 coming to your department to make a complaint
15 about some sort of office action that they
16 find objectionable?

17 A. There are two ways somebody might
18 do that or maybe more, somebody might write a
19 letter, somebody might call or somebody might
20 ask to complete a grievance form and they

21 would go through a formal grievance process.

22 Q. When you say "a grievance form,"

23 that is something that the employee would

24 request from --

25 A. They could request or it may be

1 S. Donoghue

2 advised that they complete a grievance form.

3 Q. Under what circumstances would
4 someone be advised to complete a grievance
5 form?

6 A. Well, it could be somebody who
7 might feel that policy hasn't been put into
8 place fairly.

9 Q. Okay.

10 A. And they've tried maybe working
11 this out with their supervisor through, you,
12 know, numerous discussions and it might be
13 advised that they go through the grievance,
14 which is a very formal process.

15 Q. Okay.

16 Do you recall if Mr. Bryan ever
17 filled out a grievance form for any complaint?

18 A. No, I don't.

19 Q. Going back to our discussion
20 about language, did Mr. Bryan ever make

21 complaints to you about language in the
22 workplace that he found objective because he
23 felt it was homophobic?

24 A. I know he raised the issue, but I
25 don't know if it was related to language or

1 S. Donoghue

2 just an experience that he was having, I don't
3 recall specifically about the language.

4 Q. Do you ever recall Mr. Bryan
5 lodging complaints because he, himself, was
6 being referred to as a faggot?

7 A. I know he filed a charge on which
8 he stated that, but I don't recall that that,
9 that he -- he didn't speak to me directly
10 about hearing that language in the workplace.

11 Q. When you say "he filed a charge,"
12 what specifically are you referring to?

13 A. It was a discrimination charge
14 that he had filed a couple of years ago. I
15 don't remember specifically when.

16 Q. So, to your recollection, when
17 the first you heard of Mr. Bryan's complaint
18 regarding being called a faggot was after he
19 had filed a complaint with some sort of
20 outside agency?

21 A. Yes.

22 MS. KALE: Objection.

23 Go ahead, you can answer.

24 A. Yes, I believe that is the first

25 time I heard about it or read about it, I

1 S. Donoghue

2 should say.

3 Q. Okay.

4 After you read about it, did you
5 have any involvement with the complaint in
6 your capacity, in whatever your job title was
7 in human resources department?

8 A. Our practice is once we get an
9 official charge of discrimination, we
10 immediately contact our law firm, so I would
11 be working with the attorney and looking into
12 the issue.

13 Q. Did you look into that particular
14 issue with regards to Mr. Bryan?

15 A. I believe I recall being part of
16 interviewing people.

17 Q. And who did you interview?

18 A. I don't recall.

19 Q. Did you take notes in those
20 interviews?

21 A. If I did, they would have to --

22 they would have been submitted.

23 Q. Who would you have submitted them

24 to?

25 A. I would have submitted them to

1 S. Donoghue

2 our attorney, but I don't believe I took the
3 note-taking. I was not the official, I was
4 there in a different capacity.

5 MS. KALE: Can we clarify whether
6 we are referring to -- because there
7 are multiple actions, if we are
8 speaking of the EEOC charge or the
9 prior charge? If we can try to put
10 dates or something to try to
11 distinguish.

12 MR. SCOTT: Sure.

13 Q. Do you recall in the year 2002
14 reading information related to a complaint
15 that Edmund Bryan filed with the City of New
16 York Commission on Human Rights in which he
17 complained being called a faggot on the job?

18 A. I recall -- I don't know the
19 date, the year, but I do recall reading
20 complaints that he had about perceived sexual

21 orientation.

22 Q. Okay.

23 A. That's when I first heard about

24 that.

25 Q. And was part of that perceived

1 S. Donoghue

2 sexual orientation complaint language directed
3 towards him in which he was called a faggot?

4 A. I don't remember the specifics, I
5 would have to read that again to refresh my
6 memory, it was so long ago.

7 Q. You do recall sitting in on
8 interviews with Memorial employees related to
9 complaints by Edmund Bryan about being called
10 a fag; is that right?

11 A. I believe so.

12 Q. You don't recall the year,
13 whether it was 2002, 2003, 2004?

14 A. I don't.

15 Q. Okay. Do you recall who took the
16 meetings with you, as far as on the human
17 resources' side?

18 A. It wouldn't have been anybody
19 else on the human resources' side. It would
20 have been one of our attorneys.

21 Q. Okay.

22 Do you recall if you ever had an

23 interview with a Mr. Rupert Gillette regarding

24 complaints by Mr. Edmund Bryan about being

25 called a faggot in the workplace, whether it

1 S. Donoghue

2 was in 2002, 2003, 2004, 2005 or any time
3 thereafter?

4 A. I recall meeting with Mr.
5 Gillette, but I don't recall the specifics.

6 Q. Do you recall any other
7 complaints? We've talked about complaints
8 about music made by Mr. Bryan, complaints
9 about language made by Mr. Bryan, any other
10 complaints that you recall as far as you
11 receiving from Mr. Bryan, complaints about
12 problems in the workplace?

13 A. There was a complaint about the
14 use of the word "nigger" and it was N-I-G-G-A,
15 a slang term.

16 Q. How did Mr. Bryan lodge this
17 complaint?

18 A. I don't recall the mechanism.

19 Q. Did you handle this complaint as
20 far as your responsibilities in human

21 resources?

22 A. Yes, I remember speaking to Mr.

23 Meggs and Mr. Gillette about that.

24 Q. And just so we're clear, you gave

25 a spelling just now N-I-G-G-A?

1 S. Donoghue

2 A. Yes.

3 Q. Is there some sort of different
4 connotation with regards to that word based on
5 the spelling?

6 MS. KALE: Objection.

7 THE WITNESS: Should I answer it?

8 MS. KALE: You can answer if you
9 have an answer.

10 THE WITNESS: Yes, I do have an
11 answer.

12 A. When I first heard about it, I
13 took it as N-I-G-G-E-R and then when I was
14 talking to -- and I don't recall if it was Mr.
15 Gillette or Mr. Meggs, we didn't mean nigger,
16 we meant nigga. It doesn't matter what you
17 mean, the word is still offensive. I am not
18 interested that it is a slang word, it is
19 still offensive in the workplace so cease and
20 desist, so that's what I meant.

21 Q. Okay.

22 As far as your meetings with Mr.

23 Meggs and Mr. Gillette regarding this

24 particular complaint, do you recall taking

25 notes?

1 S. Donoghue

2 A. If I did, I would have submitted
3 those.

4 Q. And who would you have submitted
5 those to?

6 A. To our attorney.

7 Q. Do you recall the year that that
8 meeting or those meetings may have taken
9 place?

10 A. No, I don't.

11 Q. That meeting or those meetings,
12 did they take place with both Mr. Gillette and
13 Mr. Meggs present at the same time or were
14 they separate meetings on separate occasions?

15 A. You know, I don't recall.

16 Q. Do you recall conducting an
17 investigation into some complaints made by
18 Edmund Bryan in March, meaning the
19 investigation took place in March of 2007?

20 A. Yes, I do.

21 Q. And based on what you can recall,
22 what was the nature of those complaints that
23 Mr. Bryan made at that time?

24 A. I would have to refer to my
25 notes. I'm sorry I don't recall the

1 S. Donoghue

2 specifics.

3 Q. Do you recall whether or not one
4 of the complaints was Mr. Bryan saying there
5 was a lewd conversation on the job and people
6 on the job were saying that who men live at
7 home are viewed as feminine and Mr. Bryan
8 interpreted that as being a slight against him
9 because he lives at home with his mother?

10 MS. KALE: Objection. The
11 witness can't interpret how Mr. Bryan
12 understood something, but if you can
13 answer.

14 A. I remember looking into the
15 statement about living at home.

16 Q. Would you, without commenting on
17 whether or not Mr. Bryan actually felt that --

18 A. I'm talking about the words, that
19 literally looking at the complaint, somebody
20 was making fun of somebody living at home.

21 Q. You do recall that?

22 A. Yes, I do.

23 Q. You also recall as part of that

24 March, 2007 investigation a complaint made by

25 Mr. Bryan about jokes being made about putting

1 S. Donoghue

2 Jamaicans on the top of snow-covered mountains

3 and giving them shovels and leaving them

4 there?

5 A. I remember that remark being

6 made.

7 Q. And you conducted the

8 investigation related to those comments as

9 well?

10 A. Yes, I did.

11 Q. And how did you go about

12 conducting your investigation into these

13 comments?

14 A. I believe I interviewed people on

15 his work team.

16 Q. Did you interview a John Meggs?

17 A. As the manager of the department,

18 I probably did.

19 Q. And just so we can get for the

20 record, who is John Meggs?

21 A. John Meggs was the manager of the

22 department.

23 Q. And when you say "of the

24 department," which department are we referring

25 to?

1 S. Donoghue

2 A. Central processing.

3 Q. And how long have you known John
4 Meggs for?

5 A. I don't know him personally.

6 Q. In his capacity as manager of
7 central processing at Memorial, how long have
8 you known John Meggs?

9 A. Oh, gosh, I probably knew him for
10 maybe four or five years. I was trying to
11 remember when I had that assignment to that
12 work group. Possibly four to five years.

13 Q. And it's only in his capacity as
14 the manager of this unit that you came to know
15 Mr. Meggs?

16 A. Correct.

17 Q. And it is only in his capacity as
18 manager of this unit that you had any
19 interaction with Mr. Meggs?

20 A. Correct.

21 Q. You interviewed a Kevin Walrond?

22 A. Yes, I don't remember the names

23 of the people specifically.

24 Q. Do you recall anything about

25 Kevin Walrond?

1 S. Donoghue

2 A. No, I don't.

3 Q. What about Miguel Ruiz?

4 A. If he was in the department at
5 the time, I would have interviewed him.

6 Q. And Rupert Gillette?

7 A. I may have interviewed him as the
8 supervisor.

9 Q. And when you say he is the
10 supervisor, could you just briefly explain the
11 hierarchy, the office hierarchy between Mr.
12 Meggs, Mr. Gillette and Mr. Bryan; how is that
13 set up?

14 A. There are several shifts within
15 that department. It is a 24 by 7 operation.
16 Mr. Meggs would have been the overall manager
17 responsible for all of the shifts and Mr.
18 Gillette would have been the supervisor of the
19 night shift.

20 Q. And, if you know, what is Mr.

21 Bryan's job title?

22 A. He might -- I think they refer to

23 that particular work group as CPD specialist,

24 I believe.

25 Q. What about Kevin O'Connor; do you

1 S. Donoghue

2 recall interviewing Kevin O'Connor with
3 regards to these comments?

4 A. The name is vaguely familiar, but
5 I would have to look at the report.

6 Q. Did you take notes related to
7 your investigation back in March of 2007?

8 A. Yes, I did.

9 Q. And what was your note-taking
10 process, literally, how did you go about doing
11 it?

12 A. I generally handwrite my notes, I
13 handwrite them and then I submit them. We
14 have a required -- we've devised a report form
15 and then I would put that into a Word
16 document.

17 Q. When you say a report form has
18 been devised, when did that occur?

19 A. Maybe a year or two ago.

20 Q. And this process then results in

21 you taking handwritten notes from an
22 investigation and typing them up into some
23 sort of format; is that correct?

24 A. Correct.

25 Q. Did you interview Edmund Bryan in

1 S. Donoghue

2 March of 2007 regarding his complaints about
3 these particular comments, the one about men
4 living at home and the one about Jamaicans on
5 the top of a mountain?

6 A. He initiated the complaint.

7 Q. So your answer is yes with regard
8 to you speaking to him?

9 A. Yes, he met with me.

10 Q. Did you take notes during your
11 initial interaction, your initial conference
12 with Mr. Bryan on this particular complaint?

13 A. I believe I did.

14 Q. What other action did you take
15 related to your investigation of the complaint
16 made by Mr. Bryan regarding the comment about
17 men living at home and the comment about
18 putting Jamaicans on the top of a mountain
19 with a shovel?

20 A. I recall that I tried to reach

21 out to Edmund, but I was unable to do so to

22 give him results of my investigation.

23 Q. And what were the results of your

24 investigation?

25 A. I could not confirm that anything

1 S. Donoghue

2 that he had said took place.

3 Q. As part of your investigation?

4 A. And may I say something, please?

5 Q. Oh, yes, please.

6 A. Or maybe a clarification of what
7 Edmund heard versus what someone may have
8 intended or maybe people sharing their
9 experience.

10 Q. During this particular
11 investigation, this March of 2007
12 investigation, did you also have occasion to
13 review an e-mail exchange between Rupert
14 Gillette and John Meggs regarding a prior
15 incident with the use of a Jamaican accent
16 that Mr. Bryan had taken offense to?

17 A. I can't say that I recall the
18 e-mail exchange, no.

19 Q. And as far as your final
20 conclusion, you are saying you couldn't

21 find -- and, you know, I don't want to put
22 words in your mouth, can you just restate
23 again what your finding was after your
24 investigation, if you recall?

25 A. I don't think I --- my

1 S. Donoghue

2 recollection is I couldn't confirm that

3 anything -- I'm trying to think of the right

4 word here. I don't believe I could confirm

5 that anything offensive took place, but I do

6 remember speaking again -- and I do this

7 habitually when I have these investigations if

8 there was even the possibility of something

9 happening that couldn't be determined, but

10 just to speak to the manager and the

11 supervisor that in the event something like

12 this could have happened or could have been

13 interpreted as being offensive --

14 Q. Yes.

15 A. -- to get them to look at that

16 and get them to remind people about workplace

17 behavior, appropriate workplace behavior, I

18 should say.

19 Q. Did you also in relation to that

20 last comment, take occasion to specifically

21 inform a supervisor, whether that be Mr. Meggs

22 or Mr. Gillette, to discontinue the use, the

23 mimicking accents and the use of the word

24 "nigga"?

25 MS. KALE: Objection.

1 S. Donoghue

2 A. No, I remember speaking to them
3 about the use of the word "nigger," that it
4 was inappropriate, didn't matter if it was a
5 slang word or not. Some generations, it is
6 not a slang word, it is very offensive, you
7 need to keep that in mind.

8 And what was the other piece of
9 that? I'm sorry.

10 Q. Mimicking accents.

11 A. Yes, that's about the gentleman
12 who was supposedly trying to -- yes, it could
13 be offensive to some people and if someone
14 wanted to do that on their own time, that was
15 fine but, again, not in the workplace.

16 Q. During this particular
17 investigation, the March 2007 investigation,
18 did you have occasion to review any paperwork,
19 documents of any sort, related to Mr. Bryan's
20 earlier complaint with the human rights

21 commission?

22 A. I don't know that I would have

23 seen it as being relevant. I don't recall

24 reviewing it during that investigation. I did

25 get the complaint as it had come to me.

1 S. Donoghue

2 That's my recollection.

3 Q. Okay. At the point in time when
4 you were conducting this March of 2007
5 investigation, were you aware that Mr. Bryan
6 had made specific complaints about his
7 supervisor, Rupert Gillette, related to
8 discrimination vis-a-vis his national origin,
9 the fact that he is a Jamaican?

10 A. I don't believe so.

11 Q. At the time that you conducted
12 your investigation in 2007, March 2007, were
13 you monitoring Rupert Gillette for
14 counterproductive relationships with people in
15 his staff?

16 MS. KALE: Objection.

17 If you understand the question,
18 you can answer.

19 THE WITNESS: I do understand the
20 question.

21 A. I wasn't monitoring Mr. Gillette.

22 Q. In September of 2005, were you
23 monitoring the working relationships of Mr.
24 Rupert Gillette with staff members for any
25 reason?

1 S. Donoghue

2 A. It is the word "monitoring" that
3 I'm having difficulty with.

4 Q. Thank you. Very good.

5 In September of 2005, had you
6 been made aware, by either John Meggs or any
7 other employees of Memorial, working
8 relationships involving Rupert Gillette that
9 may have been in violation of the employee
10 handbook or the policy handbook for Memorial?

11 A. I am aware of issues, but I can't
12 say, I don't recall the date or the year. But
13 I do know that there were complaints about Mr.
14 Gillette and his interaction with his staff.

15 Q. If you can recall, what was the
16 nature of those complaints?

17 A. I think the overall thing was it
18 was perceived that Mr. Gillette favored some
19 staff as opposed to other staff members.

20 Q. And this favoritism that you

21 referred to, how did it manifest itself

22 literally with the employees under Mr.

23 Gillette's supervision?

24 A. I think there was the feeling

25 that some people may have gotten extended

1 S. Donoghue

2 lunch break periodically or meal break, I
3 should say. He permitted loud music and some
4 of which people -- I think specifically rap
5 music, and some people took offense to that
6 being played in the workplace. And then maybe
7 also we did address inappropriate language
8 that could have been used from time to time.

9 Q. The inappropriate language that
10 we are referring to, did that include language
11 like use of the N word?

12 A. I think it was referencing more,
13 what I would call, street language cursing. I
14 only remember the N word as a one-time
15 occurrence, but I could be mistaken on that.

16 Q. What about when you say street
17 language, was the word or term --

18 A. Profanities.

19 Q. Was the word "faggot" included in
20 those, in that profanity, was that one of the

21 terms?

22 A. I can't remember specifically.

23 Q. Did you ever have occasion to sit

24 down and talk with Mr. Gillette with regards

25 to this particular issue of favoritism with

1 S. Donoghue

2 staff in his supervision and the language in
3 the department when he is the supervisor in
4 charge?

5 A. Yes, I did.

6 Q. And do you recall when, how many
7 times -- first of all, how many times did you
8 have conversations with Mr. Gillette with
9 regards to those particular issues?

10 A. Maybe a couple of times.

11 Q. More than twice?

12 A. I don't recall, but I know it was
13 more than once.

14 Q. And do you recall the years or
15 the time frame in which these meetings
16 occurred?

17 A. I'm going to say maybe within the
18 last three or four years possibly, but I don't
19 really remember specifically the years.

20 Q. And as far as these locations of

21 these meetings, did these meetings occur in

22 your office or another location?

23 A. Up at 1275 York Avenue where Mr.

24 Gillette works.

25 Q. Did you take notes at these

1 S. Donoghue

2 meetings?

3 A. If I did, I would have submitted

4 those. I don't recall.

5 Q. To your best recollection, what

6 did you discuss with Mr. Gillette the first

7 time you sat down with him and discussed these

8 issues, favoritism, inappropriate language in

9 the workplace?

10 A. I brought the issues to his

11 attention. Regarding the favoritism, he said

12 he found Edmund difficult to work with and

13 since Edmund tended to isolate himself, was

14 not part of the team. So he didn't feel he

15 was exhibiting favoritism, but he probably had

16 a different relationship with people because

17 there was probably a different interaction

18 with team members.

19 I think at some point he and

20 Edmund had been friendly, but there had been a

21 falling out of some sort so sometime in

22 history that relationship changed.

23 Q. Okay.

24 A. But I remember talking to him

25 about, you know, he was a supervisor and his

1 S. Donoghue
2 relationship really had to exhibit that of a
3 supervisor and not to be -- to be weary of
4 showing favoritism to one or other people.

5 Same thing with the radio
6 playing, you know, the music, that type of
7 thing, to talk to him about that. It was --
8 not everybody appreciated the same type of
9 music and that he had to control that.

10 Q. As far as the use of
11 inappropriate language?

12 A. I spoke to him about that too.

13 Q. What did you tell him?

14 A. That, I remember him telling me
15 it was a very stressful job that they have to
16 do in that department, cleaning medical
17 instruments, seeing a lot of blood and gore
18 and that it was exasperating and frustrating,
19 but to deal with it however they could deal
20 with it and that, talk it out but --

21 Q. Did you ever commit to writing

22 your admonitions to Mr. Gillette?

23 A. I believe he did get some type of

24 warning, but I don't remember if it was a

25 memo. I do recall there was something

1 S. Donoghue

2 administered to him at some point in time, but

3 I can't tell you when. I just remember he was

4 spoken to and he was given a warning of some

5 sort.

6 Q. Do you recall if the warning was

7 administered by you or by someone else?

8 A. I don't have the ability to

9 administer the warning.

10 Q. Okay. Is it possible that John

11 Meggs had administered the warning?

12 A. That would have been the

13 appropriate person, but I don't know

14 specifically if he is the one that did it.

15 Q. Was there ever a discussion of

16 termination, around this time as far as your

17 conversation with Mr. Gillette? When I say

18 "this time," meaning the time frame where you

19 had these conversations with him about

20 favoritism, inappropriate language in the

21 workplace, was his termination ever

22 considered?

23 A. Mr. Gillette's termination?

24 Q. Yes.

25 A. At one point, it was considered.

1 S. Donoghue

2 Q. When you say "at one point," when
3 was that?

4 A. I don't remember specifically.

5 Q. Was it during the time you were
6 having these conversations with him?

7 A. I would say it probably was
8 around the time he got some type of warning.

9 Q. And was this because after
10 initially speaking with him, the behavior that
11 he had been admonished about had continued?

12 A. My recollection was, I think,
13 whether to terminate his employment or to give
14 him some type of corrective action.

15 Q. That was the discussion?

16 A. I believe that, and so he had
17 never had any type of warning before, so the
18 decision was to give him the opportunity to
19 change his behavior.

20 Q. And the reason that this

21 consideration took place between termination
22 and corrective action, was that because he had
23 not responded to initial verbal admonitions?
24 When I say "responded," he hasn't changed his
25 behavior?

1 S. Donoghue

2 A. I don't recall.

3 Q. If you haven't said it already,
4 what was the final determination when that
5 consideration took place, to either
6 termination or some sort of corrective action
7 for Mr. Gillette?

8 A. Could you repeat the question,
9 please?

10 Q. What was the final determination
11 regarding whether or not to terminate Mr.
12 Gillette for his behavior or to allow him some
13 sort of corrective action?

14 A. I believe he got -- he received
15 some type of corrective memo. I should -- can
16 I -- I just want to make one clarification?

17 When I explained the corrective
18 action to you, that process goes for certain
19 levels of employees and once you reach what we
20 call an M 8 level, you don't go through that

21 formal process. You could just receive a memo
22 about your performance or your conduct and
23 there are no steps that you're entitled to and
24 you're not entitled to the grievance procedure
25 either at that level and above.

1 S. Donoghue

2 So I think Mr. Gillette may have
3 fit the category that he would not go through
4 a series of corrective action or even if it
5 was, it could have been determined that his
6 behavior was such that we wouldn't take him
7 step by step. This is something we considered
8 to be serious, not to be tolerated and not to
9 happen again. So he would receive a harsher
10 penalty, which would have been some type of
11 memo.

12 Q. When you say it is a harsher
13 penalty, what is the effect of receiving one
14 of these memos; how would that impact someone
15 in Mr. Gillette's position at the hospital?

16 A. Well, he is on notice, his job is
17 in jeopardy.

18 Q. Okay.

19 A. Possibly he didn't receive his
20 annual increase. It would be reflected on his

21 performance review.

22 Q. And does a memo like this have an

23 effect for a period of time, does it stay on

24 the record for a year and then get taken off

25 or how does that work?

1 S. Donoghue

2 A. It never leaves the record. It
3 is part of the historical record, but say
4 after a year or so you've demonstrated, you
5 know, a 360 change in whatever the issue was,
6 you know, it wouldn't be considered unless
7 that behavior surfaced again.

8 Q. Okay.

9 In your March 2007 investigation
10 of Mr. Gillette's conduct, prior conduct as a
11 supervisor, specifically related to allowing
12 certain type of language/conversation to take
13 place in the workplace, was that investigated
14 or reviewed related to the March 2007
15 investigation?

16 A. I don't believe that it was
17 reviewed in that context. However, I do
18 remember speaking to him about specifically
19 about the incident where the person was trying
20 to learn how to cultivate this other accent,

21 that that also was not appropriate in a
22 workplace setting. If you want to do that, do
23 that on your own time, your own place, but
24 just how you have to be aware of those things.
25 It wasn't to the same degree -- I didn't see

1 S. Donoghue

2 it in the same way as previous complaints

3 about Mr. Gillette had been made.

4 Q. Is it fair to say that the reason

5 why the prior memo given to Mr. Gillette was

6 not reviewed or considered as part of the

7 March 2007 investigation was because the

8 nature of the complaint in March of 2007 was a

9 different type than the nature of complaints

10 that gave rise to the previous discipline that

11 Mr. Gillette may have received?

12 A. It had nothing to do with type.

13 I think it was as a result of my talking to

14 everybody. They viewed that the particular

15 situation as being playful, it was at lunch

16 break and there was no harm intended, there

17 were -- so it was a totally different nature.

18 They saw it as being playful,

19 whereas I thought it was not. Then again,

20 talking to Mr. Gillette about enlarging his

21 awareness of issues that could possibly be
22 offensive to people. Even though it may be
23 playful to some people, to other people it is
24 not necessarily playful.

25 Q. Okay. Did you have any

1 S. Donoghue

2 discussions with Mr. Meggs regarding possible
3 relationship between Mr. Gillette's previous
4 disciplines and this current complaint by Mr.
5 Bryan?

6 A. I don't recall the specific
7 discussion I had with Mr. Meggs.

8 Q. I'm sorry, you are saying you
9 don't recall the or a?

10 A. I don't recall the specific -- I
11 don't recall the specifics of the discussion I
12 had with him offhand.

13 MS. KALE: Can we take a break?

14 MR. SCOTT: Absolutely.

15 (Recess taken.)

16 MR. SCOTT: Read back the last
17 question and answer please.

18 (Record read.)

19 MR. SCOTT: I'm going to ask that
20 these pages -- it is three pages, Bates

21 MKSCC 00105, 00100 and 00107 -- be
22 marked for identification. We'll mark
23 as Plaintiff's -- we will use numbers
24 because they used letters -- A.
25 Off the record.

1 S. Donoghue

2 (Discussion off the record.)

3 MR. SCOTT: We will mark MKSCC

4 105, 106 and 107. Back on the record

5 Bates numbers are 105, 106, 107,

6 Plaintiff's A.

7 (Document entitled "Investigation

8 Summary, Investigation Completed

9 3/14/07" bearing production Nos.

10 MKSC 00105 through MKSCC 00107

11 marked Plaintiff's Exhibit A for

12 identification, as of this date.)

13 Q. Ms. Donoghue, I want you to take

14 a look at the three pages that are placed in

15 front of you. Take your time. When you are

16 ready, just look up and let me know.

17 A. All right.

18 Q. Ms. Donoghue, do you recognize

19 that document?

20 A. Yes, I do.

21 Q. What is that?

22 A. It is a summary of an

23 investigation that I conducted as a result of

24 Mr. Bryan meeting with me about some

25 complaints.

1 S. Donoghue

2 Q. Specifically that the
3 investigation that you conducted in March of
4 2007?

5 A. Yes, correct.

6 Q. And the allegations that gave
7 rise to this investigation were Mr. Bryan
8 complained of the use of racial slur and
9 homophobic remark by his co-worker, a vendor,
10 and a supervisor?

11 A. Correct.

12 Q. And do you recall what the racial
13 slur was that he was complaining of?

14 A. The use of the word "nigger."

15 Q. And the homophobic remark?

16 A. People who live at home, let me
17 see, they are viewed as feminine.

18 Q. The co-workers that he complained
19 about, who are they; what are their names?

20 A. As indicated in this report, the

21 second bullet, it would have been -- let's see
22 Kevin O'Connor is not a co-worker. It would
23 be Kevin Walrond, Jamal Robinson, Miguel Ruiz
24 and Rupert Gillette, the supervisor.

25 Q. Before we move on, Mr. O'Connor,

1 S. Donoghue

2 what is his relationship to the hospital?

3 A. He is a vendor. My understanding
4 is he works with the company from whom we've
5 made some instrument purchases and his job
6 is -- he comes every night to do a specific
7 check on the instruments, to make sure they
8 are operational.

9 Q. Okay. When you say
10 "instruments," are these like machines that
11 are --

12 A. They are very sophisticated
13 technological instruments that are used in
14 operating procedures.

15 Q. And not to diminish what his
16 skills or his title are, so essentially he
17 performs maintenance on hospital equipment?

18 A. I would say that is probably a
19 good description.

20 Q. You used the term "vendor" to

21 describe him?

22 A. Correct, he is not an employee of
23 the hospital.

24 Q. Would a vendor also be considered
25 a subcontractor?

1 S. Donoghue

2 A. I'm not sure of the official
3 category.

4 Q. Under the code of conduct as laid
5 out by the Memorial handbook, Memorial
6 employee handbook, who is governed by that
7 code of conduct?

8 A. Anyone who has any business to do
9 at the hospital, who works at the hospital.

10 Q. Would a vendor under that
11 definition be governed under the code of
12 conduct?

13 A. Yes. Correct.

14 Q. You interviewed Mr. O'Connor
15 related to this March 2007 investigation?

16 A. Yes, I did.

17 Q. And you took notes related to
18 that investigation?

19 A. Yes, I did.

20 Q. And you transcribed those

21 handwritten notes into the typewritten final
22 investigative report that you have before you,
23 correct?

24 A. Yes, I did.

25 Q. And the same goes for your

1 S. Donoghue

2 interaction with Mr. Walrond; is that correct?

3 A. Yes.

4 Q. The handwritten notes that you

5 then transcribed into a typewritten report,

6 correct?

7 A. Correct.

8 Q. And the same for Mr. Ruiz?

9 A. Correct.

10 Q. And Mr. Gillette?

11 A. Correct.

12 Q. Mr. Jamal Robinson, he was not

13 interviewed?

14 A. I believe he was, it states here

15 that he was on medical leave at the time.

16 Q. Okay. Yes, very good. Thank

17 you.

18 Now these interviews, did they

19 occur individually or as a group?

20 A. Individually.

21 Q. And who was present during each
22 of the interviews?

23 A. My recollection is except for Mr.
24 O'Connor, Mr. Meggs was with me.

25 Q. Did Mr. Meggs take any notes

1 S. Donoghue

2 related to this investigation?

3 A. I have no recollection of that.

4 MR. SCOTT: I am going to mark

5 for identification -- this would be B,

6 Plaintiff's B.

7 (One-page corrective action memo

8 from John Meggs to Rupert

9 Gillette dated August 3, 2006

10 marked Plaintiff's Exhibit B for

11 identification, as of this date.)

12 Q. Ms. Donoghue, I would like you to

13 take your time, read that document and when

14 you are done, just let me know.

15 A. All right.

16 Q. Are you done, ma'am?

17 A. Yes.

18 Q. Ms. Donoghue, do you recognize

19 that document?

20 A. Yes, I do.

21 Q. What do you recognize it to be?

22 A. It is what I say, a serious

23 corrective action memo given to Mr. Gillette.

24 Q. If you can say, what is the date

25 on that memo?

1 S. Donoghue

2 A. August 3rd, 2006.

3 Q. Who, if you can determine, is
4 responsible for giving that memo to Mr.
5 Gillette?

6 A. It appears that it was John Meggs
7 who administered this.

8 Q. Thank you.
9 Are you also cc'd, copied on that
10 memo?

11 A. Yes, I am.

12 Q. Who else is copied on that memo?

13 A. Aileen Killen and Liz McCormick.

14 Q. If you can state for the record,
15 who is Aileen Killen and Liz McCormick?

16 A. Aileen Killen at the time was
17 director of the perioperative department. Liz
18 McCormick is responsible for the department of
19 nursing under which CPD reports up through.

20 Q. Would it be safe to say both of

21 those individuals are within the hospital

22 hierarchy above Mr. Meggs in title?

23 A. Correct.

24 Q. Is one of those individuals above

25 the other or are they contemporaneous?

1 S. Donoghue

2 A. No, they are not. Liz McCormick
3 would be the overall manager, director.
4 Aileen would have reported up to her and John
5 Meggs would have reported to Aileen Killen.

6 Q. All right. Very good.

7 Are you aware whether or not
8 prior to the administration of this memo,
9 whether or not any discussions took place
10 between Mr. Meggs, Ms. Killen and/or Ms.
11 McCormick related to this memo?

12 A. Yes, there were discussions.

13 Q. Were you a party to those
14 discussions?

15 A. Yes, I was.

16 Q. When did those discussions take
17 place, if you can recall?

18 A. I cannot recall the exact time,
19 but I believe it was after we had gotten the
20 administrative law judge's ruling on the city

21 commission case.

22 Q. If you recall, how many

23 discussions took place?

24 A. I couldn't tell you that.

25 Q. Do you recall where, geography,

1 S. Donoghue

2 where did they take place?

3 A. They would have taken place at

4 1275 York Avenue.

5 Q. Any one particular office?

6 A. I couldn't tell you the exact

7 location.

8 Q. Did you take notes at any meeting

9 related to those discussions?

10 A. I don't recall doing so.

11 Q. Okay. What were the sum and

12 substance of the meetings that took place

13 between yourself, Mr. Meggs, Ms. Killen and

14 Ms. McCormick related to this particular memo

15 regarding Mr. Gillette?

16 A. We took the judge's ruling very

17 seriously and we felt that we would have to

18 administer some type of disciplinary action.

19 Q. Was anyone else present at these

20 meetings or at this meeting?

21 A. I don't recall specifically.

22 Q. And when you referred to the

23 disciplinary action that should be taken, what

24 ultimately was the disciplinary action that

25 was taken?

1 S. Donoghue

2 A. The memo that she you just gave
3 me, the August 3rd, 2006 document.

4 Q. Do you know who was responsible
5 for actually drafting up, writing that memo?

6 A. I don't remember specifically.

7 Q. Did you take any part in the
8 actual drafting of the letter yourself, did
9 you suggest language for the memo?

10 A. I believe I may have done so.

11 Q. If you recall what language in
12 there, in particular, that you feel you were
13 responsible for or you suggested?

14 A. I couldn't tell you that.

15 Q. As far as the overall letter
16 itself, do you agree, were you in complete
17 agreement with that memo?

18 A. That it should be administered?

19 Q. Yes.

20 A. Yes, I do agree that it should

21 have been administered.

22 Q. Do you agree with the sum and
23 substance of the memo, the content of the
24 memo?

25 A. Yes, I do.

1 S. Donoghue

2 MR. SCOTT: We'll have this

3 marked as Plaintiff's C.

4 (Two-page memo from John Meggs to

5 Rupert Gillette dated September

6 20, 2005, second page bearing

7 production No. MKSCC 0010 marked

8 Plaintiff's Exhibit C for

9 identification, as of this date.)

10 Q. Again, Ms. Donoghue, I would like

11 you to take your time, read that document and

12 when you are done, look up and let me know.

13 A. Yes.

14 Q. Ms. Donoghue, do you recognize

15 this document?

16 A. Yes, I do.

17 Q. What do you recognize it to be?

18 A. I recognize it to be a memo that

19 was given to Mr. Gillette by Mr. Meggs.

20 Q. Have you seen this document

21 before?

22 A. I recall seeing it before, yes.

23 Q. Do you recall when you first saw

24 it?

25 A. Specifically, no, I don't.

1 S. Donoghue

2 Q. After reading it, could you state
3 what was the incident that gave rise to this
4 memo being administered by Mr. Meggs to Mr.
5 Gillette?

6 A. Mr. Bryan had complained that he
7 had received his benefits package from the
8 benefits department and he had left it on a
9 desk or a table, and at some point during the
10 evening the package was gone and I believe he
11 saw it in a garbage pail.

12 Q. Ultimately, Mr. Bryan found out
13 that Mr. Gillette had actually thrown out his
14 benefits package in the garbage?

15 A. Correct.

16 Q. And I would like to direct your
17 attention to that last paragraph --

18 A. Yes.

19 Q. -- of the document?

20 A. Yes, correct.

21 Q. Specifically the last sentence:
22 "He was made aware that our
23 conversations concerning these
24 counter-productive relations are being
25 monitored by our Employee Relations

1 S. Donoghue
2 Specialist, Sheila Donoghue."

3 A. I see that.

4 Q. Just going back to our earlier
5 conversation about monitoring, where
6 monitoring came from --

7 A. Yes.

8 Q. -- if you can just explain to me
9 what sort of actual activities were taking
10 place on your part related to this particular
11 incident and other counter-productive
12 relationships vis-a-vis Mr. Gillette?

13 A. What I can tell you, I was
14 doing -- the word "monitor" is the word that
15 Mr. Meggs chose.

16 Q. Yes.

17 A. What I was doing was doing
18 periodic follow-ups to see how things were
19 going in the department.

20 Q. And when you would do a

21 follow-up, how specifically or logistically

22 would that take place?

23 A. It could be a phone conversation,

24 where I would pick up a phone and ask John how

25 things were going. It could be as part of

1 S. Donoghue

2 another discussion, I might say oh, by the
3 way, how are things going.

4 Q. Did you ever stop into the actual
5 unit on occasion when Mr. Gillette was on duty
6 to see how things were going yourself?

7 A. Not very often due to the time
8 that he was working. At other times during
9 the day, but not specifically at night. Not
10 as often at night as I did during the day.

11 Q. Just for the record, Mr.
12 Gillette's tour of duty was what time?

13 A. The night shift. The last shift,
14 if you will.

15 Q. 11 P.M. to 7:00?

16 A. 11:30 to 7:30 or 11:00 to 7:00,
17 I'm not sure.

18 Q. I'm just going to refer your
19 attention back to Exhibit B, the corrective
20 memo dated August 3rd, 2006.

21 A. Correct.

22 Q. Specifically, the use of that

23 last bold-typed phrase in the first paragraph,

24 the use of vulgar language in the workplace --

25 A. Yes.

1 S. Donoghue

2 Q. -- do you consider the use of the
3 word "nigger" to be vulgar language in the
4 terms of this particular memo?

5 A. Do you mean for me personally or
6 as a professional employee? I don't know
7 how --

8 Q. Well, you know what, we're going
9 to say both. And you can determine which one
10 you'll say first.

11 A. I would say personally and
12 professionally, I consider it to be offensive,
13 very offensive.

14 Q. Would you consider it to be
15 vulgar, personally?

16 A. I would choose to describe it
17 as -- for me, it would be deeply offensive.

18 Q. As far as professionally now
19 within the context of the employee handbook,
20 and the policy and procedure manual --

21 A. Yes.

22 Q. -- is the use of the word

23 "nigger" in the work environment vulgar

24 language?

25 A. For me, again, I would say it is

1 S. Donoghue

2 more serious than that, it is deeply
3 offensive. But I would like to say something
4 else.

5 Q. All right.

6 A. When I looked in that particular
7 issue about the use of the word "nigger," I
8 was primarily talking to a relatively young
9 group of black males and they were trying to
10 say to me that the word nigger to them was
11 like jerk, stupid, it was a slang expression.

12 And my discussion with them is
13 that may have been how they were using the
14 word, however, there were many people in the
15 workplace who come from a whole different
16 historic perspective and even if not from that
17 perspective, they consider the word, no matter
18 how you spell it, to be offensive. It is not
19 to be used in the workplace. In other words,
20 they didn't mean it to be offensive. This is

21 how they refer to each other.

22 Q. In your position in the human

23 resources department, did you or do you -- and

24 I won't use the "or," strike the "or."

25 Do you interpret the use of the

1 S. Donoghue

2 word "nigger" in the workplace to be a
3 violation of the rules of the employee
4 handbook and/or the policy manual?

5 A. If someone is complaining it is
6 offensive, I would say yes. My general rule
7 of thumb would be just not to use the word at
8 all because we don't know what is offensive to
9 some people and not to others, but just
10 discontinue using the word. It has the
11 potential to be offensive.

12 Q. So you would say personally and
13 based on your understanding of the handbook --

14 A. It is something.

15 Q. -- it is out of bounds?

16 A. I think it is.

17 Q. The last subject --

18 A. Okay.

19 Q. -- posting of jobs.

20 A. Okay.

21 Q. The employee handbook for
22 Memorial addresses the manner in which job
23 vacancies are posted by the hospital; is that
24 correct?

25 A. I don't recall specifically

1 S. Donoghue

2 details, but I recall there is a section
3 referencing to them.

4 Q. Do you recall what is the process
5 of posting of jobs?

6 A. There are two processes,
7 actually.

8 Q. Thank you.

9 A. I'll begin with the department.
10 If a department has an opening and they may be
11 due to the particular skills of a job or they
12 sense that maybe they want to encourage
13 promotional opportunities from within, what
14 they are advised to do is to let everybody
15 know that there is a particular -- in their
16 department, that there is a particular job
17 that is about to be opened or created.

18 Q. Okay.

19 A. And then they could use a memo,
20 put it someplace, or verbally let people know

21 about this, so that people in that department

22 only would have that ability to post for the

23 job.

24 Q. To apply?

25 A. Yes. Sometimes departments do

1 S. Donoghue
2 that thinking they'll get an internal
3 candidate and then they don't. So then they
4 will do what we refer to as the external
5 posting, it will be put online so now it is
6 open to the universe, to anyone with the
7 qualifications to apply.

8 Q. Okay.

9 A. But sometimes what happens is a
10 manager may know of somebody through
11 connections and then they will work with
12 employment, if they've identified somebody
13 that they may have in mind. If they work with
14 employment, to do the recruiting for this
15 particular individual. That doesn't happen
16 very often.

17 Q. Have you ever had occasion to
18 receive a complaint from Edmund Bryan about
19 failure to promote him or improper posting of
20 a new job in his unit, did that ever come up?

21 A. I don't know if Edmund
22 specifically spoke to me about that, I don't
23 recall.

24 Q. Do you know whether or not he
25 ever made a complaint to your department,

1 S. Donoghue

2 maybe not to you specifically, but to your
3 department about the failure to promote or
4 improper posting of a job notice?

5 A. I am not aware of that.

6 Q. During your last tenure as an
7 employee relations specialist --

8 A. Yes.

9 Q. -- did you ever have occasion to
10 sit in on interviews for the promotion of
11 someone who is already an employee at the
12 hospital?

13 A. I was not involved in that at
14 that time.

15 Q. Would you be consulted at any
16 point in time during the interview process
17 when an employee is being considered for a
18 promotion?

19 A. Possibly.

20 Q. And under what circumstances

21 would you have been consulted?

22 A. It could be if they felt that

23 somebody wasn't ready at this moment for that

24 particular job or if somebody didn't have the

25 skills for the job.

1 S. Donoghue

2 Q. Do you recall ever being
3 consulted by a manager or supervisor regarding
4 the potential promotion of Edmund Bryan for
5 another job title?

6 A. Yes, I do.

7 Q. What circumstances, when did that
8 occur?

9 A. Again, I can't tell you
10 specifically when, but I do remember being
11 consulted about it.

12 Q. Well, do you recall any details
13 about that particular occasion?

14 A. Yes, I do.

15 Q. Please.

16 A. I believe Edmund was looking to
17 move into an equipment specialist-type job in
18 the department and the discussion was Edmund
19 has had a history of communication issues and
20 one of the essential aspects of the equipment

21 specialist position is that you have very good
22 interpersonal skills. It is a training
23 component. You are not only training people
24 on your staff, but you are also interacting
25 with other departments such as the whole

1 S. Donoghue

2 perioperative department. So it does require
3 strong personal skills, communication skills.

4 Q. And who initiated this discussion
5 with you?

6 A. John Meggs.

7 Q. What did you have to say with
8 regards to this discussion?

9 A. I remember telling John that if
10 Edmund were to apply, that he should be
11 interviewed for the position.

12 Q. Any other input on your behalf in
13 regard to that process?

14 A. And to inform Edmund why he may
15 not be considered and for him to consider
16 developing his communication skills so that if
17 something should come up in the future, he
18 could be seriously considered for the
19 possibility of moving into that position.

20 Q. So as far as your communication

21 with Mr. Meggs, is it fair to say that when he
22 contacted you, he raised a concern regarding
23 Edmund Bryan's communication skills to you?

24 A. I was aware of Edmund's
25 communication skills before that conversation.

1 S. Donoghue

2 Q. How did you become aware of this
3 communication skills before?

4 A. I believe John Meggs had spoken
5 to me about addressing -- how to address
6 Edmund's deficits in that area with him.

7 Q. Do you recall when this
8 conversation took place?

9 A. I couldn't tell you specifically,
10 no.

11 Q. Any notes related to that
12 particular conversation?

13 A. If I did, they would have been
14 submitted. I'm not sure about that.

15 Q. Do you recall generally, that
16 earlier conversation about, to use your
17 language, Edmund's deficits in communication,
18 what Mr. Meggs said to you in that
19 conversation?

20 A. Edmund really chose not to

21 interact with the rest of the staff. He
22 remained apart. He didn't demonstrate good
23 communication skills. So based on that, on
24 the observation of that, he would not -- he
25 could not at that point be considered a

1 S. Donoghue

2 candidate.

3 Q. And I know you are talking about
4 when you were considering him for the
5 position, the promotion. I am referring to an
6 earlier conversation that you said you had
7 when Mr. Meggs approached you about how to
8 talk to Edmund about his communication skills.

9 A. My understanding is that Edmund
10 at some times was very defensive when speaking
11 to him. So it was just a matter of just
12 coaching Mr. Meggs on how to approach somebody
13 that might be more defensive, but to still
14 hopefully allow them to hear what it was you
15 were trying to counsel them about.

16 Q. And you don't recall around the
17 time, year, that this conversation took place?

18 A. It was pretty much an ongoing
19 thing with Edmund over time.

20 (Transcript continues on next

21 page)

22

23

24

25

1 S. Donoghue

2 MR. SCOTT: Thank you for your
3 time, Ms. Donoghue, it has been a
4 pleasure.

5 MS. KALE: I have no questions.

6

7 (Time noted: 12:40 P.M.)

8

9

10 _____
Sheila Donoghue

11

12 Subscribed and sworn to

13 before me this_____day

14 of_____2008.

15 _____

16

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1

2

C E R T I F I C A T E

3

STATE OF NEW YORK)

4

) ss.:

COUNTY OF NEW YORK)

5

I, CHARISSE ROMEO, a Shorthand

6

Reporter and Notary Public within and

7

for the State of New York, do hereby

8

certify:

9

That I reported the proceedings in

10

the within-entitled matter, and that the

11

within transcript is a true record of

12

such proceedings.

13

I further certify that I am not

14

related, by blood or marriage, to any of

15

the parties in this matter and that I am

16

in no way interested in the outcome of

17

this matter.

18

IN WITNESS WHEREOF, I have hereunto

19

set my hand this_____day of_____.

20

2008.

21

22

CHARISSE ROMEO

23

24

25

1

2 April 24, 2008

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13 C Two-page memo from John Meggs to
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